

# EXHIBIT F

A CASE MANAGEMENT CONFERENCE is scheduled as follows:  
 Date: June 22, 2007 Time: 10:00 a.m. Dept.: 212 Div.: Room:  
 Address of court (if different from the address above):

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

4. Description of case
- a. Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
- Breach of contract

PLAINTIFF/PETITIONER: Gladys Dewitt  
 DEFENDANT/RESPONDENT: City and County of San Francisco

CASE NUMBER:  
 CGC-07-459735

- b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)  
 After a medical leave of absence, plaintiff was denied the right to return to work by defendant.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

**Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

**Trial date**

- a. ☐ The trial has been set for (date):  
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):  
 c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

**Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 4-5 days  
 b. ☐ hours (short causes) (specify):

**3. Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number:  
 e. Fax number:  
 f. E-mail address:  
 g. Party represented:

☐ Additional representation is described in Attachment 8.

**9. Preference**

☐ This case is entitled to preference (specify code section):

**10. Alternative Dispute Resolution (ADR)**

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.  
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):  
 c. ☐ The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER: Gladys Dewitt	CASE NUMBER: CGC-07-459735
DEFENDANT/RESPONDENT: City and County of San Francisco	

d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation  
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
 (4) ☐ Binding judicial arbitration  
 (5) ☐ Binding private arbitration  
 (6) ☐ Neutral case evaluation  
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

#### 1. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

#### 2. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):  
 b. Reservation of rights: ☐ Yes ☐ No  
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

#### 13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

#### 14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

- (1) Name of case:  
 (2) Name of court:  
 (3) Case number:  
 (4) Status:

☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

#### 15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

#### 16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

Case No.

PROOF OF SERVICE BY MAIL

I, the undersigned, declare:

I am over the age of 18 years and am not a party to this action. I am employed in the City and County of San Francisco. My business address is 530 Jackson Street, 2<sup>nd</sup> Floor, San Francisco, California, 94133. On the date set forth below, I served the foregoing documents described as follows:

- **PLAINTIFF'S CMC STATEMENT**

On the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

San Francisco Superior Court  
Clerk of the Court  
400 McAllister St.  
San Francisco, CA 94102

Dennis Herrera, City Attorney  
Rose-Ellen Fairgrieve  
1390 Market Street, 6<sup>th</sup> Floor  
San Francisco, CA 94102

☒ **BY FIRST CLASS MAIL:** I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to-wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing this date, following ordinary business practices.

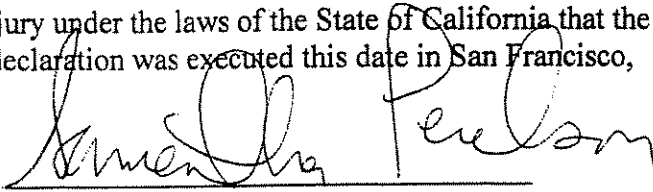
☐ **BY PERSONAL SERVICE:** Following ordinary business practices, I cause the aforementioned document to be served, by hand delivery this date to the offices of the addressee(s).

☐ **BY OVERNIGHT MAIL:** I caused such envelope to be delivered by a commercial carrier service for overnight delivery to the office(s) of the addressee(s).

☐ **BY FACSIMILE:** I caused said document to be transmitted by Facsimile machine to the number indicated after the address(es) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this date in San Francisco, California.

Dated: 5/14/07

  
Samantha Perelson

# EXHIBIT G

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH S. SALVESON, State Bar #83788  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 5<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3845  
Facsimile: (415) 554-4248  
E-Mail: rose-ellen.fairgrieve@sfgov.org

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
LADRON DURIO, AND JAMES MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

GLADYS DEWITT,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
GENERAL HOSPITAL, LADRON  
DURIO, JAMES MOORE, and DOES 1 -  
25,

Defendants.

Case No. 459-735

**DEFENDANTS CCSF AND LADRON  
DURIO'S EX PARTE MOTION TO  
DISMISS COMPLAINT AND FOR  
ENTRY OF JUDGMENT; POINTS  
AND AUTHORITIES  
(CCP § 581(f), CRC 3.1320(h))**

Hearing Date: May 25, 2007  
Hearing Judge: Hon. Patrick J. Mahoney  
Time: 11:00 a.m.  
Place: Dept. 302

Date Action Filed: January 19, 2007  
Trial Date: Not yet set

**Attached Documents:**

- Declaration of Rose-Ellen Fairgrieve in Support of Defendants' Ex Parte Motion for Dismissal
- Proposed Judgment

*Emplo. ment*  
*Due on 5/7*  
*can file today*  
**ENDORSE  
FILED**  
San Francisco County Superior Court  
MAY 24 2007  
JUDICIAL CLERK, CLERK  
ROSSALY DE LA VEGA

## APPLICATION

Defendants City and County of San Francisco and Ladron Durio hereby move the Court to dismiss Plaintiff Gladys DeWitt's Complaint pursuant to Code of Civil Procedure 581(f) and California Rule of Court 3.1320(h). This motion is based on the Memorandum of Points and Authorities, below, the Declaration of Rose-Ellen Fairgrieve in Support of Defendants' Ex Parte Motion to Dismiss and for Entry of Judgment, and any oral argument that may be made at the ex parte hearing.

Gladys DeWitt's attorney is Ashwin Ladva, of Ladva, Shoker & Associates, 530 Jackson Street, 2<sup>nd</sup> Floor, San Francisco, CA 94133. Mr. Ladva's phone number is 415-296-8844.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Defendants City and County of San Francisco and Ladron Durio move to dismiss this action against them on grounds that the time to amend the Complaint following the Court's ruling sustaining Defendants' demurrer to the Complaint has expired. CCP §581(f)(2); CRC 3.1320(g), (h).

### II. PROCEDURAL HISTORY

On February 28, 2007, Defendants City and County of San Francisco and Ladron Durio filed a demurrer to Gladys DeWitt's entire complaint on grounds that DeWitt failed to file a timely government claim, and that each of the five causes of action failed to state facts sufficient to state a cause of action and are barred as a matter of law. On April 25, 2007, the Court issued an Order Sustaining the Defendants' Demurrer. (*See* Fairgrieve Declaration, Exhibit A.) The demurrer was sustained without leave to amend as to the First and Second causes of action. The Court granted leave to amend as to the Third, Fourth, and Fifth causes of action. (*Id.*)

In its order sustaining the demurrer, the Court did not specify the time period within which any amendment to the Complaint had to be made, making the time to amend 10 days from the date of service of the April 25, 2007 Order. CRC 3.1320(g). The Court's Order was hand served on



DeWitt's counsel on April 26, 2007. (See Fairgrieve Declaration, Exhibit B.) Thus, DeWitt had until May 7, 2007 to amend her complaint. No amended complaint has been filed to date.


On May 24, 2007, counsel for the City and Durio provided notice to counsel for DeWitt that she would be appearing on the ex parte calendar on May 25, 2007, in Department 302, seeking dismissal of the complaint. (See Fairgrieve Declaration, ¶¶5-6.)

### III. ARGUMENT

DeWitt has failed to amend her complaint. Because the time to amend the complaint following the Court's ruling sustaining Defendants' demurrer has expired, the City and Ladrón Durio respectfully request that the Court dismiss this action against them with prejudice and enter judgment in their favor, pursuant to California Code of Civil Procedure § 581(f)(2). California Rule of Court 3.1320(h) expressly permits such relief to be granted on ex parte application: "A motion to dismiss the entire action and for entry of judgment after expiration of the time to amend following the sustaining of a demurrer may be made by ex parte application to the court under Code of Civil Procedure section 581(f)(2)."

Dated: May 24, 2007

DENNIS J. HERRERA  
City Attorney  
ELIZABETH S. SALVESON  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE  
Deputy City Attorney

By:   
ROSE-ELLEN H. FAIRGRIEVE

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
LADRÓN DURIO, AND JAMES MOORE

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH S. SALVESON, State Bar #83788  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 5<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3845  
Facsimile: (415) 554-4248  
E-Mail: rose-ellen.fairgrieve@sfgov.org

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
LADRON DURIO, AND JAMES MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

GLADYS DEWITT,  
Plaintiff,  
vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
GENERAL HOSPITAL, LADRON  
DURIO, JAMES MOORE, and DOES 1 -  
25,  
Defendants.

Case No. 459-735

**DECLARATION OF ROSE-ELLEN H.  
FAIRGRIEVE IN SUPPORT OF  
DEFENDANTS' EX PARTE MOTION  
TO DISMISS COMPLAINT AND FOR  
ENTRY OF JUDGMENT**

Hearing Date: May 25, 2007  
Hearing Judge: Hon. Patrick J. Mahoney  
Time: 11:00 a.m.  
Place: Dept. 302

Date Action Filed: January 19, 2007  
Trial Date: Not yet set

Attached Documents: Exhibits A-C

I, ROSE-ELLEN HEINZ FAIRGRIEVE, declare as follows:

1. I am an attorney of record for Defendants in the above-captioned matter. I am  
admitted to practice law in California and to appear before this Court. I have personal knowledge

ENDORSED  
**FILED**  
San Francisco County Superior Court  
MAY 24 2007  
GORDON FARRA, Clerk  
By: ROSSALY DE LA VEGA  
Deputy Clerk

1 of the facts in this declaration, and if called upon to testify, I could and would testify competently to  
2 the facts contained herein.

3 2. Attached hereto as Exhibit A is this Court's Order Sustaining Defendants' Demurrer,  
4 issued on April 25, 2007.

5 3. Attached hereto as Exhibit B is a proof of service from Dynamo Deliveries, which  
6 hand-delivered the Court's Order on the Demurrer to counsel for DeWitt on April 26, 2007 at 1:30  
7 p.m.

8 4. Ex parte relief under these circumstances is expressly permitted by California Rule  
9 of Court 1.1320(h).

10 5. On May 24, 2007, at approximately 9:00 a.m., I phoned the office of Ashwin Ladva,  
11 counsel for Gladys DeWitt, to inform him that I would be appearing on the ex parte calendar on  
12 May 25, 2007 in Department 302 at 11:00 a.m., seeking dismissal of the complaint. I left a  
13 voicemail with the information.

14 6. I followed up my voicemail with a letter containing the same information about my  
15 intent to appear on the ex parte calendar. A true and correct copy of my letter is attached hereto as  
16 Exhibit C.

17 7. As of the writing of this declaration, I have not received a response from Mr. Ladva  
18 as to whether he intends to appear or oppose the motion.

19  
20 I declare under penalty of perjury under the laws of the State of California that the foregoing  
21 is true and correct. This declaration was executed in San Francisco, California.

22 Dated: May 24, 2007

23  
24   
25 ROSE-ELLEN H. FAIRGRIEVE  
26  
27  
28

EXHIBIT A

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH S. SALVESON, State Bar #83788  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 5<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3845  
Facsimile: (415) 554-4248  
E-Mail: rose-ellen.fairgrieve@sfgov.org

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
LADRON DURIO, AND JAMES MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

GLADYS DEWITT,  
Plaintiff,  
vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
GENERAL HOSPITAL, LADRON  
DURIO, JAMES MOORE, and DOES 1 -  
25,  
Defendants.

Case No. 459-735

**[PROPOSED] ORDER SUSTAINING  
DEFENDANT CITY AND COUNTY OF  
SAN FRANCISCO AND LADRON  
DURIO'S DEMURRER TO  
PLAINTIFF'S COMPLAINT**

Hearing Date: April 11, 2007  
Hearing Judge: Hon. Patrick J. Mahoney  
Time: 9:30 a.m.  
Place: Dept. 302

Date Action Filed: January 19, 2007  
Trial Date: Not yet set

ENDORSED  
FILED  
San Francisco County Superior Court

APR 25 2007

GORDON PARK-LI, Clerk  
BY: LINDA K. ESPY  
Deputy Clerk

This matter came on regularly for hearing on April 11, 2007, in Department 302, the Honorable Patrick J. Mahoney presiding. Present during the hearing and representing defendants City and County of San Francisco and Ladron Durio ("City") was Deputy City Attorney Rose- Ellen H. Fairgrieve. Plaintiff Gladys DeWitt was represented by her attorney, Ashwin Ladva, Esq. After considering the pleadings, oral argument, and matters judicially noticeable,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, THAT:**

The Defendants' demurrer to Plaintiff's January 19, 2007 Complaint is sustained without leave to amend as to the First and Second causes of action, and is sustained as to the Third, Fourth, and Fifth causes of action, with leave to amend as against all Defendants except San Francisco General Hospital.

**In so ordering, the Court finds that:**

1) The Complaint is barred on its face by Government Code Sections 911.2 and 911.4. Pursuant to those Sections, a plaintiff must file a California tort claim within six months or, in the event of late claim relief, within one year of the date the injury incurred as a result of defendant's wrongful act or omission.

2) Plaintiff filed her tort claim on March 20, 2006. Plaintiff does not allege any facts that give rise to her causes of action that occurred after September 20, 2005, six months before she filed her claim. Accordingly, Plaintiff's tort claim was untimely.

3) The first and second causes of action for breach of contract and breach of implied covenant of good faith and fair dealing fail as a matter of law because a public servant may not, as a matter of law, assert contract or quasi-contract claims. (*Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1432-35.)

4) The third cause of action for fraud against the City fails because the City is immune from liability for misrepresentation under California Government Code Section 818.8. (*Burden v. County of Santa Clara* (2000) 81 Cal.App.4<sup>th</sup> 244, 250.)

5) The fourth and fifth causes of action for intentional infliction of emotional distress and negligent infliction of emotional distress fail because they are barred by Workers' Compensation Act exclusivity.

6) Generally, an employee whose injury arises out of and in the course of employment is limited to recovery of workers' compensation benefits. (Labor Code §§ 3600-3602.) "Section 3600 of the Labor Code provides that an employer is liable for injuries to its employees arising out of and in the course of employment, and section [3602] declares that where the conditions of workers' compensation exist, the right to recover such compensation is the exclusive remedy against an employer for injury or death of an employee." (*Vuillemainroy v. American Rock & Asphalt, Inc.* (1999) 70 Cal.App.4<sup>th</sup> 1280, 1283.) These provisions apply to all injuries that arise from the employment relationship. (*Livitsanos v. Superior Court* (1992) 2 Cal.4<sup>th</sup> 744, 747.)

7) Where, as here, "the complaint affirmatively alleges facts indicating coverage by the workers' compensation laws, if it fails to state additional facts negating application of the exclusive remedy provision, no civil action will lie and the complaint is subject to a general demurrer." (*Halliman v. Los Angeles Unified School Dist.* (1984) 163 Cal.App.3d 46, 50.)

8) Plaintiff's allegations arise out of and in the course of employment, and thus her fourth and fifth causes of action are barred as a matter of law under Workers' Compensation exclusivity.

**IT IS SO ORDERED.**

Dated: APR 24 2007

**PATRICK J. MAHONEY**

Honorable Patrick J. Mahoney  
San Francisco Superior Court

Approved as to form.

Ashwin Ladva, Esq.

Dated



PROOF OF SERVICE

I, Karen Passanisi, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action: I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On April 26, 2007, I served the following document(s):

- **ORDER SUSTAINING DEFENDANT CITY AND COUNTY OF SAN FRANCISCO AND LADRON DURION'S DEMURRER TO PLAINTIFF'S COMPLAINT**

on the following persons at the locations specified:

Ashwin Ladva, Esq.  
Ladva, Shoker & Associates  
530 Jackson St., 2<sup>nd</sup> Floor  
San Francisco, CA 94133-5143

in the manner indicated below:

☐ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☒ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-4248 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report ☐ is attached or ☒ will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed April 26, 2007, at San Francisco, California.

  
Karen Passanisi



EXHIBIT B

(Do not use this Proof of Service to show service of a Summons and Complaint)

- ORDER SUSTAINING DEFENDANT CITY AND COUNTY OF SAN FRANCISCO AND LADRON DURIO'S  
DEMURRER TO PLAINTIFF'S COMPLAINT

☐ The documents are listed in the Attachment to Proof of Personal Service—Civil (Documents Served) (form POS-020(D)).

3. I personally served the following persons at the address, date, and time stated:
- a. Name: ASHWIN LADVA
  - b. Address: 530 JACKSON STREET, 2ND FLOOR, SAN FRANCISCO, CA
  - c. Date: APRIL 26TH, 2007
  - d. Time: 1:30 p.m.

d. Time: 1:30 p.m.

☐ The persons are listed in the Attachment to Proof of Personal Service—Civil (Persons Served) (form POS-020(P)).

4. I am
- a. ☒ not a registered California process server.
- b. ☐ a registered California process server.
- c. ☐ an employee or independent contractor of a registered California process server.
- d. ☐ exempt from registration under Business & Professions Code section 22350(b).

5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):

TARA BETH COOPER / DYNAMO DELIVERIES  
1604 DOLORES STREET, SAN FRANCISCO CA, 94110  
(415) 336-8657

6. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7. ☐ I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: MAY 15TH, 2007

TARA BETH COOPER

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

EXHIBIT C

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA  
City Attorney



OFFICE OF THE CITY ATTORNEY

ROSE-ELLEN HEINZ FAIRGRIEVE  
Deputy City Attorney

DIRECT DIAL: (415) 554-3845  
E-MAIL: rose-ellen.fairgrieve@sfgov.org

May 24, 2007

**Via Facsimile Only: 296-8847**

Ashwin Ladva, Esq.  
Ladva, Shoker & Associates  
530 Jackson Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94133

Re: DeWitt v. CCSF, et al., Case No. 459-735  
Appearance on May 25, 2007 Ex Parte Calendar

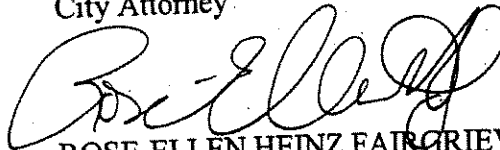
Dear Ashwin:

I am writing to follow up the voicemail I left for you at 9:00 this morning. Tomorrow, Friday, May 25, 2007, I will be appearing on the ex parte calendar in Department 302. I will be seeking a dismissal and judgment in favor of Defendants City and County of San Francisco and Ladron Durio. Please let me know if you plan to appear and/or oppose the motion.

I will serve you with Defendants' motion and supporting documents this afternoon via facsimile.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

  
ROSE-ELLEN HEINZ FAIRGRIEVE  
Deputy City Attorney

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE MAY-24-2007 TIME 11:11 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

START=MAY-24 11:10

END=MAY-24 11:11

FILE NO.=984

STN COMM. ONE-TOUCH/ STATION NAME/TEL NO.  
 NO. ABBR NO.

001 OK 92968847

PAGES DURATION

002/002 00:00:22

\*\*\*\*\*

- \*\*\*\* -

4155544248- \*\*\*\*\*

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
 City Attorney

OFFICE OF THE CITY ATTORNEY

ROSE-ELLEN FAIRGRIEVE  
 Deputy City Attorney

DIRECT DIAL: (415) 554-3845

## FACSIMILE COVER SHEET

Thursday, May 24, 2007; Time: 10:10 AM

TO:	OF:	PHONE:	FAX:
Ashwin Ladva, Esq.	Ladva, Shoker & Associates	(415) 296-8844	(415) 296-8847

FROM:	OF:	PHONE:	FAX:
Rose-Ellen Fairgrieve	City Attorney's Office	(415) 554-3845	(415) 554-4248

**MESSAGE**

Re: DeWitt v. CCSF

We are transmitting a total of 2 pages, including this cover sheet.  
 If you did not receive all of the pages or there is another problem, please call me at (415) 554-3845.

## CONFIDENTIALITY NOTE

THIS AND ANY ACCOMPANYING PAGES CONTAIN INFORMATION FROM THE SAN FRANCISCO CITY ATTORNEY'S OFFICE WHICH IS CONFIDENTIAL AND PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, THEN BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THE ACCOMPANYING DOCUMENT (OR THE INFORMATION CONTAINED IN IT) IS PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE TRANSMISSION IN ERROR, PLEASE NOTIFY OUR OFFICES IMMEDIATELY SO THAT WE CAN ARRANGE FOR RETRIEVAL AT NO COST TO YOU.

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH S. SALVESON, State Bar #83788  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 5<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3845  
Facsimile: (415) 554-4248  
E-Mail: rose-ellen.fairgrieve@sfgov.org

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
LADRON DURIO, AND JAMES MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

GLADYS DEWITT,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
GENERAL HOSPITAL, LADRON  
DURIO, JAMES MOORE, and DOES 1 -  
25,

Defendants.

Case No. 459-735

**[PROPOSED] JUDGMENT IN FAVOR  
OF DEFENDANTS CITY AND  
COUNTY OF SAN FRANCISCO AND  
LADRON DURIO**

Date Action Filed: January 19, 2007  
Trial Date: Not yet set

This matter came on the ex parte calendar on May 25, 2007, in Department 302, the Honorable Patrick J. Mahoney presiding. Present and representing Defendants City and County of San Francisco and Ladron Durio ("City") was Deputy City Attorney Rose-Ellen H. Fairgrieve. Counsel for Plaintiff Gladys DeWitt, Ashwin Ladva, Esq., was given notice of the ex parte matter and did/did not appear. After considering the Defendants' ex parte application, the declaration of Rose-Ellen Fairgrieve in support of Defendants' ex parte application, and any oral argument presented at the ex parte hearing,

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, THAT:

2 The Complaint is dismissed with prejudice. Judgement is granted against Gladys DeWitt  
3 in favor of the Defendants City and County of San Francisco and Ladron Durio.  
4

5 **IT IS SO ORDERED.**

6 Dated: \_\_\_\_\_

7 Honorable Patrick J. Mahoney  
8 San Francisco Superior Court  
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DENNIS J. HERRERA, State Bar 139669  
 City Attorney  
 ELIZABETH S. SALVESON, State Bar #83788  
 Chief Labor Attorney  
 ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
 Deputy City Attorney  
 Fox Plaza  
 1390 Market Street, 5<sup>th</sup> Floor  
 San Francisco, California 94102-5408  
 Telephone: (415) 554-3845  
 Facsimile: (415) 554-4248  
 E-Mail: rose-ellen.fairgrieve@sfgov.org

ENDORSED  
**FILED**  
 San Francisco County Superior Court  
 MAY 24 2007

GORDON CARROLL, Clerk  
 BY: ROSSALY DE LA VEGA  
 Deputy Clerk

Attorneys for Defendants  
 CITY AND COUNTY OF SAN FRANCISCO,  
 LADRON DURIO, AND JAMES MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO  
 UNLIMITED JURISDICTION

GLADYS DEWITT,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
 FRANCISCO, SAN FRANCISCO  
 GENERAL HOSPITAL, LADRON  
 DURIO, JAMES MOORE, and DOES 1 –  
 25,

Defendants.

Case No. 459-735

**PROOF OF SERVICE**

I, Karen Passanisi, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On May 24, 2007, I served the attached:

- DEFENDANTS CCSF AND LADRON DURIO'S EX PARTE MOTION TO DISMISS COMPLAINT AND FOR ENTRY OF JUDGMENT; POINTS AND AUTHORITIES



- 1 • DECLARATION OF ROSE-ELLEN H. FAIRGRIEVE IN SUPPORT OF
- 2 DEFENDANTS' EX PARTE MOTION TO DISMISS COMPLAINT AND FOR
- 3 ENTRY OF JUDGMENT
- 4 • [PROPOSED] JUDGMENT IN FAVOR OF DEFENDANTS CITY AND COUNTY
- 5 OF SAN FRANCISCO AND LADRON DURIO

6 on the interested parties in said action, by placing a true copy thereof in sealed envelope(s)

7 addressed as follows:

8 Ashwin Ladva, Esq.  
9 Ladva, Shoker & Associates  
530 Jackson St., 2<sup>nd</sup> Floor  
San Francisco, CA 94133-5143  
Facsimile: (415) 296-8847


10 and served the named document in the manner indicated below:

- 11 ☒ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true
- 12 and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-4248 to
- 13 the persons and the fax numbers listed above. The fax transmission was reported as complete and without
- 14 error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the
- 15 transmission report ☐ is attached or ☒ will be filed separately with the court.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing

17 is true and correct.

18 Executed May 24, 2007, at San Francisco, California.

19   
20 Karen Passanisi

\*\*\*\*\* -COMM. JOURNAL\*\*\*\*\* DATE MAY-24-2007 TIME 13:58 \*\*\*\*\*

MODE = MEMORY TRANSMISSION

START=MAY-24 13:55

END=MAY-24 13:58

FILE NO.=988

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CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

ROSE-ELLEN FAIRGRIEVE  
Deputy City Attorney

DIRECT DIAL: (415) 554-3845

## FACSIMILE COVER SHEET

Thursday, May 24, 2007; Time: 12:57 PM

TO:	OF:	PHONE:	FAX:
Ashwin Ladva, Esq.	Ladva, Shoker & Associates	(415) 296-8844	(415) 296-8847
FROM:	OF:	PHONE:	FAX:
Rose-Ellen Fairgrieve	City Attorney's Office	(415) 554-3845	(415) 554-4248

MESSAGE

Re: DeWitt v. CCSF

We are transmitting a total of 20 pages, including this cover sheet.  
If you did not receive all of the pages or there is another problem, please call me at (415) 554-3845.

## CONFIDENTIALITY NOTE

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FOX PLAZA - 1390 MARKET STREET, 5<sup>TH</sup> FLOOR - SAN FRANCISCO, CALIFORNIA 94102-5408  
RECEPTION: (415) 554-3800 - FACSIMILE: (415) 554-4248

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# EXHIBIT H

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH S. SALVESON, State Bar #83788  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 5<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3845  
Facsimile: (415) 554-4248  
E-Mail: rose-ellen.fairgrieve@sfgov.org

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
LADRON DURIO, AND JAMES MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

GLADYS DEWITT,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
GENERAL HOSPITAL, LADRON  
DURIO, JAMES MOORE, and DOES 1 -  
25,

Defendants.

Case No. 459-735

**NOTICE OF ENTRY OF JUDGMENT  
AND ORDER IN FAVOR OF  
DEFENDANTS CITY AND COUNTY  
OF SAN FRANCISCO AND LADRON  
DURIO**

Hearing Date: May 25, 2007  
Hearing Judge: Hon. Patrick J. Mahoney  
Time: 11:00 a.m.  
Place: Dept. 302

Date Action Filed: January 19, 2007  
Trial Date: Not yet set

RESPONSE  
FILED  
MAY 26 2007  
BY MARIA GANDIA  
Deputy Clerk

1 PLEASE TAKE NOTICE that on May 25, 2007, the Court entered the attached  
2 Judgment and Order in Favor of Defendants City and County of San Francisco and Ladron  
3 Durio. A copy of the Judgment and Order are attached as Exhibit A and Exhibit B, respectively.

4 Dated: May 25, 2007

DENNIS J. HERRERA  
City Attorney  
ELIZABETH S. SALVESON  
Chief Labor Attorney  
ROSE-ELLEN H. FAIRGRIEVE  
Deputy City Attorney


By:   
ROSE-ELLEN H. FAIRGRIEVE  
Attorneys for Defendant

EXHIBIT A

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 ELIZABETH S. SALVESON, State Bar #83788  
 Chief Labor Attorney  
 3 ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
 Deputy City Attorney  
 4 Fox Plaza  
 1390 Market Street, 5<sup>th</sup> Floor  
 5 San Francisco, California 94102-5408  
 Telephone: (415) 554-3845  
 6 Facsimile: (415) 554-4248  
 E-Mail: rose-ellen.fairgrieve@sfgov.org

ENDORSED  
 FILED  
 San Francisco County Superior Court

MAY 25 2007

GORDON PARK-LI, Clerk

BY: \_\_\_\_\_ Deputy Clerk

7 Attorneys for Defendants  
 8 CITY AND COUNTY OF SAN FRANCISCO,  
 9 LADRON DURIO, AND JAMES MOORE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 COUNTY OF SAN FRANCISCO  
 12 " UNLIMITED JURISDICTION

13 GLADYS DEWITT,

14 Plaintiff,

15 vs.

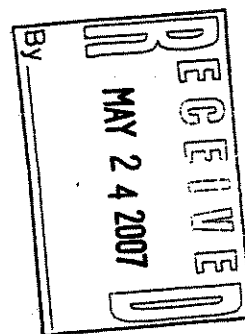
16 CITY AND COUNTY OF SAN  
 17 FRANCISCO, SAN FRANCISCO  
 18 GENERAL HOSPITAL, LADRON  
 25, DURIO, JAMES MOORE, and DOES 1 -

19 Defendants.

Case No. 459-735

[PROPOSED] JUDGMENT IN FAVOR  
 OF DEFENDANTS CITY AND  
 COUNTY OF SAN FRANCISCO AND  
 LADRON DURIO

Date Action Filed: January 19, 2007  
 Trial Date: Not yet set



20  
 21 This matter came on the ex parte calendar on May 25, 2007, in Department 302, the  
 22 Honorable Patrick J. Mahoney presiding. Present and representing Defendants City and County  
 23 of San Francisco and Ladron Durio ("City") was Deputy City Attorney Rose-Ellen H. Fairgrieve.  
 24 Counsel for Plaintiff Gladys DeWitt, Ashwin Ladva, Esq., was given notice of the ex parte  
 25 matter and did/did not appear. After considering the Defendants' ex parte application, the  
 26 declaration of Rose-Ellen Fairgrieve in support of Defendants' ex parte application, and any oral  
 27 argument presented at the ex parte hearing,  
 28

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, THAT:

2 The Complaint is dismissed with prejudice. Judgement is granted against Gladys DeWitt  
3 in favor of the Defendants City and County of San Francisco and Ladron Durio.  
4

5 IT IS SO ORDERED.

6 Dated: May 25, 2007


  
7 Honorable Patrick J. Mahoney  
8 San Francisco Superior Court  
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EXHIBIT B

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 ELIZABETH S. SALVESON, State Bar #83788  
 Chief Labor Attorney  
 3 ROSE-ELLEN H. FAIRGRIEVE, State Bar #181257  
 Deputy City Attorney  
 4 Fox Plaza  
 1390 Market Street, 5<sup>th</sup> Floor  
 5 San Francisco, California 94102-5408  
 Telephone: (415) 554-3845  
 6 Facsimile: (415) 554-4248  
 E-Mail: rose-ellen.fairgrieve@sfgov.org

7 Attorneys for Defendants  
 8 CITY AND COUNTY OF SAN FRANCISCO,  
 LADRON DURIO, AND JAMES MOORE  
 9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 COUNTY OF SAN FRANCISCO  
 12 UNLIMITED JURISDICTION

13 GLADYS DEWITT,  
 14 Plaintiff,

15 vs.

16 CITY AND COUNTY OF SAN  
 FRANCISCO, SAN FRANCISCO  
 17 GENERAL HOSPITAL, LADRON  
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 18 25,

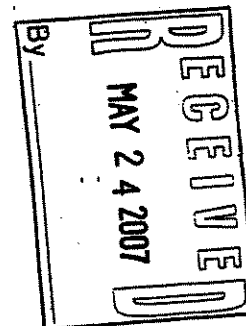
19 Defendants.

Case No. 459-735

**ORDER**  
**[PROPOSED] JUDGMENT IN FAVOR**  
**OF DEFENDANTS CITY AND**  
**COUNTY OF SAN FRANCISCO AND**  
**LADRON DURIO**

Date Action Filed: January 19, 2007  
 Trial Date: Not yet set

ENDORSED  
 FILED  
 San Francisco County Superior Court  
 MAY 25 2007  
 GORDON PARK-LI, Clerk  
 BY: \_\_\_\_\_ Deputy Clerk




20  
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3 in favor of the Defendants City and County of San Francisco and Ladron Durio.  
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5 IT IS SO ORDERED.

6 Dated: May 25, 2007

7   
8 Honorable Patrick J. Mahoney  
9 San Francisco Superior Court  
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PROOF OF SERVICE

I, Karen Passanisi, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On May 25, 2007, I served the following document(s):

- **NOTICE OF ENTRY OF JUDGMENT AND ORDER IN FAVOR OF DEFENDANTS CITY AND COUTY OF SAN FRANCISCO AND LADRON DURIO**

on the following persons at the locations specified:

Ashwin Ladva, Esq.  
Ladva, Shoker & Associates  
530 Jackson St., 2<sup>nd</sup> Floor  
San Francisco, CA 94133-5143

in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.


☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.

☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-4248 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report ☐ is attached or ☒ will be filed separately with the court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed May 25, 2007, at San Francisco, California.

  
\_\_\_\_\_  
Karen Passanisi